REMARKS

Claims 1-12 are pending and reconsideration is requested.

REJECTIONS UNDER 35 USC § 112

In items 3-5 spanning pages 2-3 in the August 16, 2005 Office Action, claims 1-12 were rejected under 35 U.S.C. § 112, second paragraph as indefinite because "the term 'low level service' in claims 1, 6-10 is a relative term" (Office Action, page 2, lines 18-20). Contrary to this assertion, claims 1-12 are not indefinite because the limitation "low level" is defined in the specification at least on pages 11-14.

> The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph, *Seattle Box Co., v. Industrial Crating & Packing, Inc.,* F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification ... **OR WHETHER A STANDARD IS DISCLOSED**

MPEP 2173.05(B) **Relative Terminology** (Rev. 2, May 2004) p. 2100-208. For example, claim 1 first defines "a plurality of groups of service servers depending on quality levels of rendered services" (claim 1, lines 6-7). Specifically, claim 1 establishes a relationship between "an intermediate server group of service servers" and "low level service" offerings (see claim 1, lines 7-8) which is supported in the specification by, e.g., "a low-level request is passed to a service server of the intermediate group or the low-level group" (specification, page 10, lines 24-25 and page 12, line 1).

Second, the specification on pages 10-14 establishes a standard relationship between levels of service with high, low and intermediate groups of service servers and discloses standards for "threshold values ... for maintaining the quality of each service level" (page 11, lines 16-22). Thus, the specification discloses a standard enabling a person of ordinary skill in the art to ascertain the degree of "low level service offerings" claimed. Therefore, the term "low level service" is defined and claims 1-12 are definite.

In item 6 on page 3, the Office Action rejected claims 10-12 were rejected under 35 U.S.C. § 112, sixth paragraph as "unclear how the operations/functions are performed ... [and] as impossible to determine the equivalents of the element" (Office Action, page 3, lines 5-8). First, claims 10-12 recite system elements which recite the invention and do not use means-plus-function language or inferentially claim any equivalent system elements and therefore, the sixth paragraph of 35 USC 112 does not apply. Second, the claims are clear for at least the

same reasons discussed above in regard to the traversal of the 35 U.S.C. § 112, second paragraph rejections of claims 1-12 above. Withdrawal of the rejections under 35 U.S.C. § 112 is respectfully requested.

REJECTIONS UNDER 35 USC § 103

In item 8 spanning pages 3-8 of the Office Action, claims 1-12 were rejected under 35 USC § 103(a) as being unpatentable over <u>Lumelsky</u> (US Patent 6,516,350) in view of <u>Choquier</u> (US Patent 5,951,694).

Claim 1 recites "dividing the service servers into a plurality of groups of service servers depending on quality levels of rendered services" (claim 1, lines 5-6). What was cited in <u>Lumelsky</u> describes providing "available distributed decision capability ... to achieve and enforce properties over the usage, as well as patterns of usage, of end-resources" (column 7, lines 1-4). In addition, "it creates a resource monitoring point with respect to the performance of multiple end resources and clients and their usage patterns so as to provide parameters on where, when, and how to satisfy a request" (column 7, lines 4-8). Furthermore, "global server-side resources are allocated. A plurality of intermediary system resources (such as directories and resource monitors) enable the management of such requests for target content" (column 5, line 65 to column 6, line 5). Thus, the difference between the claimed invention and what was cited in <u>Lumelsky</u> is that Applicants' invention defines/divides service servers into groups of servers depending on quality levels, while the cited portions of <u>Lumelsky</u> merely describe monitoring usage patterns and resources so as to manage targeted content service requests.

Further, claim 1 recites: "an intermediate server group of service servers which offer low level service among the service servers at a normal time and make a shift among the plurality of groups and render a service as a service quality of a group to which the shift is made" (claim 1, lines 5-9). The same portion of <u>Lumelsky</u> was cited as disclosing this limitation. As discussed above, all that is describe in this portion of <u>Lumelsky</u> is monitoring usage patterns and resources so as to manage targeted content service requests. There is no hierarchy of server groups which offer appropriate levels or service dynamically shifting between server groups based on levels of service quality required.

After it was asserted that <u>Lumelsky</u> discloses "an intermediate server group of service servers which offer low level service among the service servers at a normal time and make a shift among the plurality of groups and render a service as a service quality of a group to which the shift is made", it was admitted that <u>Lumelsky</u> "fails to explicitly teach a group of servers which offer low level service among the service servers at a normal time" (Office Action, page 4, lines

17-21). Then, the Office Action asserted that <u>Choquier</u> teaches the elements not shown in <u>Lumelsky</u>. However, what was cited in <u>Choquier</u> describes "using server load data contained within the service map ... to select an application server that has a relatively low processing load" (Abstract) and "multiple application servers independently run the same service application to provide like services to end users, a method of redirecting a client service session from a first application server to a second application server without terminating the client service session" (column 25, lines 50-54) which is in claim 1 of <u>Choquier</u>. Thus, what was cited in <u>Choquier</u> describes monitoring load data and providing back servers operating redundantly. This has nothing to do with the limitations recited in claim 1 of the application. In other words, the claimed invention offers "low level service ... at a normal time" not "corresponding" or "same service" as taught in <u>Choquier</u>.

Independent claims 6-10, all recite "low level service among the service servers at a normal time" as recited in claim 1. Therefore, it is submitted that claims 6-10 and dependent claims 2-5 and 11-12 are allowable for at least the same reasons discussed above in regard to claim 1.

For the reasons set forth above, it is submitted that claims 1-12 are in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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